

EXHIBIT K

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: June 19, 2020
Time: 3:00 p.m.
Crtrm.: 6, 2nd Floor
Judge: Hon. Jon S. Tigar

1 be asked to decide whether to move from a dorm until a cell at a specific location is
2 offered.

3 **C. The CIM Transfers and Updated Transfer Protocols**

4 **Plaintiffs' Position:**

5 At the time of the late May transfers of hundreds of medically vulnerable patients
6 from the California Institution for Men (CIM) to San Quentin and Corcoran State Prison –
7 done to try to remove those patients from the massive COVID-19 outbreak at CIM –
8 CCHCS protocols, issued on May 22, provided that patients must test negative for
9 COVID-19 before transfer, but did not specify a pre-transfer time frame for that test. Nor
10 were CIM staff specially told by Headquarters any time frame for testing these particular
11 patients before the transfers, which were ordered by Headquarters. Nor were any
12 directives given regarding testing after Plaintiffs' May 22nd email raising concerns about
13 CIM housing practices possibly exposing patients who previously tested negative,
14 including those up for transfer, to the virus. It also appears that CDCR staff who drive the
15 buses and provide security may not have been tested prior to transfer, increasing the risk of
16 transmission.

17 Patients were transferred from CIM at the end of May based on negative COVID-19
18 negative tests done in the middle or near the start of the month. Some of those tested
19 positive for COVID-19 shortly after arrival at San Quentin and Corcoran, meaning they
20 were likely positive at the time they were transferred. Others transferred to San Quentin
21 on the same bus as those patients subsequently tested positive for the virus. One of them
22 is hospitalized, in an ICU and on a ventilator.

23 It is deeply unfortunate that transfers done to keep people safe have resulted in
24 some becoming positive, and have introduced the virus to a prison – San Quentin – where
25 previously there were no confirmed cases. Although it cannot be said for certain that
26 negative tests done closer in time to the transfer date would have prevented what has now
27 occurred, it was a poor decision to not require such tests to incarcerated people and staff,
28 given public health principles and common sense, and the alert about CIM housing

1 practices we sent to CCHCS on May 22. CCHCS's current comprehensive reconsideration
2 of its testing and transfer protocols is clearly necessary.

3 The more general lessons are also clear. CCHCS must specify timeframes for
4 testing, transfers, the staff who should be tested and all related matters involving patient
5 safety.³ Similarly, CCHCS must mandate action, including regarding the timing of tests,
6 so that the message is clear and staff can be held fully accountable for noncompliance. In
7 this regard, the use of discretionary language, such as the "may" and "should not" in the
8 June 2 and June 5 policy statements regarding testing, cannot continue. The new policy,
9 strategy, or protocol must use unambiguous language.

10 Plaintiffs have asked to review the new testing and transfer policy or protocol in
11 advance of implementation later this month, so that if necessary we can comment on it, as
12 has been the standard practice for years with dozens of other policy changes. Such
13 reviews, which we will do on an expedited basis if so asked, have previously resulted in
14 changes that reduce the risk of harm to patients. CCHCS has not indicated whether it will
15 share the new testing and transfer policy or protocol in advance. Plaintiffs ask that the
16 Court direct the Receiver to do so.

17 Finally, and fundamentally, the Receiver must prohibit all inter-prison transfers
18 except those necessary for healthcare reasons or other emergencies until the new testing
19 and transfer policy or protocol is fully implemented, piloted in a substantial way, and
20 deemed adequate. In addition to the CIM to San Quentin transfers, Plaintiffs this week
21 discovered that people on or about June 8th were moved from San Quentin for purely
22 custody reasons and that one of those persons – who had tested negative six days before
23 transfer, subsequently tested positive for COVID-19 at the new prison. When asked about
24 this, CCHCS stated the patient is believed to have infected a nurse and two officers at the
25 _____

26 ³ On June 17, 2020, CCHCS informed Plaintiffs that last week, it provided CDCR with
27 recommendations to reduce the risk of COVID-19 transmission during bus transports, including
28 limits on bus capacity, but did not know whether CDCR would adopt them.

1 new prison. In addition, CCHCS stated this week that an officer who drove patients to
2 California Medical Facility in Vacaville tested positive for COVID-19, and those who
3 were in the bus may have been infected. As noted above, the Receiver, for public health
4 reasons, should prohibit all except essential transfers until it is clear that the revised testing
5 and transfer policy or protocol is adequate.

6 **Defendants' Position:**

7 As reported in the May 27, 2020 Joint Case Management Conference Statement, on
8 May 22, 2020, CCHCS issued a memorandum to all wardens and chief executive officers
9 jointly signed by Connie Gipson, Director of the Division of Adult Institutions, Dr. Joseph
10 Bick, Director of the Division of Health Care Services, and Dr. Steven Tharratt, Director
11 of Health Care Operations and Statewide Chief Medical Executive at CCHCS, entitled
12 "COVID 19 Pandemic – Road Map to Reopening Operations." Attached to that
13 memorandum was a "Covid Screening and Testing Matrix for Patient Movement," which
14 set forth direction to institutions regarding the testing and housing of inmates under
15 particular movement scenarios. That memorandum did not provide specific time frames
16 for the testing of inmates prior to inter-prison transfers, for instance, in circumstances like
17 the transfers from CIM to San Quentin and Corcoran, that were discussed during the June
18 9, 2020 Case Management Conference. As a result of the lessons learned from the CIM
19 transfers (which are described more fully below), all inmates: (1) must be administered a
20 COVID-19 test no more than seven days before transfer and; (2) must receive a negative
21 test result before transfer. This modification to the transfer protocol was memorialized in
22 an email from CCHCS's Vince Cullen to all Chief Executive Officers on June 5, 2020. A
23 copy of this email is attached as **Exhibit B**.

24 As it pertains to the CIM transfers, on May 23, 2020, CCHCS provided the Division
25 of Adult Institutions (DAI) with a list of 691 inmates at CIM who were deemed "medically
26 high risk" and who had tested negative for COVID-19. CCHCS directed DAI to transfer
27 the listed inmates out of CIM. DAI immediately started the classification process required
28 to transfer the inmates to San Quentin and Corcoran. DAI kept CCHCS apprised of the

1 anticipated schedule for transferring the inmates, and CCHCS did not object to that
2 schedule. CCHCS did not notify DAI that a retest would be necessary of the inmates
3 before they were transferred, nor had CCHCS issued a general directive concerning the
4 timing of COVID-19 tests in relation to inmate transfers. On May 28—four business days
5 after CCHCS sent the transfer list to DAI—the transfers commenced. CCHCS suspended
6 the transfers on June 4, 2020, when it was discovered that some of the transferred inmates
7 tested positive for COVID-19 after they arrived at San Quentin and Corcoran. On June 5,
8 2020, CCHCS issued a new “testing and transfer strategy” dictating that “a patient should
9 not transfer if the date of their NEGATIVE test is past 7 days on the date of transfer. This
10 means 7 days from the date the test was administered.” There have been no additional
11 transfers from CIM since CCHCS suspended transfers on June 4.

12 **IV. RESUMPTION OF INTAKE**

13 As reported in the parties’ June 8, 2020 Joint Case Management Conference
14 Statement, CDCR has maintained the closure of county jail intake, with the exception of
15 the intake of approximately 50 county jail inmates per week, for a total of 200 inmates.
16 Four counties (Los Angeles, San Bernardino, Fresno, and San Diego) are permitted to send
17 inmates to CDCR according to a set schedule.⁴ Due to the number of positive COVID-19
18 cases in Los Angeles County jails, CDCR temporarily suspended the intake of inmates
19 from Los Angeles County jails on June 5, 2020 and replaced that intake with inmates from
20 Kern County. After receiving assurances from Los Angeles County that it is testing and
21 screening its inmates prior to transfer, CDCR will resume limited intake from Los Angeles
22 County on June 24, 2020. CDCR will continue to limit county jail intake to 50 county jail
23 inmates total per week from these same four counties through July 3, 2020. The parties
24 discussed intake at the meet and confer on June 16, 2020 and with CCHCS on the June 17,
25 2020 informational call.

26
27 ⁴ Should any of these four counties be unable to fulfill their quota, two other counties – Orange
28 County and Kern County – may send people to complete the quota.

cleaning, and other measures are appropriately implemented to ensure the health and wellbeing of both inmates and staff at each institution. However, a one-size-fits-all approach to cleaning schedules and physical distancing is not appropriate for every housing unit at every institution. Each housing unit is different and therefore, it is best left to the discretion of the wardens to determine how to implement CDCR directives pertaining to cleaning and physical distancing.

Director Gipson is also in the process of working with the wardens at each institution to encourage them to implement incentives for inmates who comply with cohorting principles and mask-wearing directives. Wardens have been very receptive to this directive and are in the process of meeting with Inmate Advisory Committees and health care staff to brainstorm potential incentives and are also in the process of considering suggested incentives provided by Plaintiffs' counsel.

DATED: June 18, 2020

HANSON BRIDGETT LLP

By: /s/ Samantha Wolff

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SAMANTHA D. WOLFF
KAYLEN KADOTANI
Attorneys for Defendants

DATED: June 18, 2020

XAVIER BECERRA
Attorney General of California

By: /s/ Damon McClain

DAMON MCCLAIN
Supervising Deputy Attorney General
NASTARAN RUHPARWAR
Deputy Attorney General
Attorneys for Defendants

1 DATED: June 18. 2020

PRISON LAW OFFICE

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3 Bv: /s/ Alison Hardy
4 ALISON HARDY
Attorney for Plaintiffs
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Exhibit A

California Department of Corrections and Rehabilitation COVID-19 Staff Testing Guidance

The following applies to all California Department of Corrections and Rehabilitation (CDCR) institutions, except for the California Medical Facility (CMF), Central California Women's Facility (CCWF), and California Health Care Facility (CHCF), identified by the Receiver, which provide skilled nursing level of care. These three institutions should follow the Skilled Nursing Facility (SNF) [testing guidance](#) issued by the California Department of Public Health (CDPH).

Testing does not replace or preclude other infection prevention and control interventions, including monitoring all staff and inmates for signs and symptoms of COVID-19, universal masking by staff and inmates for source control, use of recommended personal protective equipment, maintaining appropriate physical distancing, and environmental cleaning and disinfection. When testing is performed, a negative test only indicates an individual did not have detectable infection at the time of testing; individuals might have SARS-CoV-2 infection that is still in the incubation period or could have ongoing or future exposures that lead to infection.

Institutions without COVID-19 Cases

In institutions that currently do not have any newly diagnosed COVID-19 cases among inmates or staff within the last 14 days, CDPH recommends surveillance testing. The purpose of a surveillance testing strategy is to monitor the spread of the virus in order to isolate the virus and mitigate outbreaks.

CDPH recommends the institution implement surveillance testing of 10 percent of all staff every 14 days including staff from multiple shifts and various locations within the institution. The institution must ensure that a different cohort of staff are tested every 14 days.

In addition, specific testing is recommended for the following groups:

- 1) All employees who have not had a prior confirmed case of COVID-19 and who are regularly assigned to work in a Correctional Treatment Center, Outpatient Housing Unit, hospice, Psychiatric Inpatient Program, or Mental Health Crisis Bed shall be tested per the SNF testing guidance issued by CDPH.
- 2) All regularly assigned transportation staff who have not had a prior confirmed case of COVID-19 shall be tested at least once every month, with testing occurring throughout the month.

3) All staff who are regularly assigned to guarding duty at a community hospital, or equivalent, who have not had a prior confirmed case of COVID-19 shall be tested at least once every month, with testing occurring throughout the month.

4.) All regularly assigned culinary area staff who have not had a prior confirmed case of COVID 19 shall be tested once every month with testing occurring throughout the month.

NOTE: State may adjust the scope and frequency of staff testing based on community spread data and prevalence of the virus in the community.

Staff who test negative:

All staff should be screened for fever, respiratory symptoms, or [other symptoms](#) before entering any institution each day. To the extent possible, the institution should educate staff regarding the possible exposure of staff movement between multiple yards or buildings. Additionally, staff who are ill should stay home and notify their supervisor. Personnel who develop fever, respiratory symptoms, or [other symptoms](#) should be instructed not to report to work.

Staff who test positive:

Staff who test positive for COVID-19 and who have had NO symptoms shall be instructed to isolate themselves at home and shall not return to work until the following condition is met:

- At least 10 days have passed since the date of the positive COVID-19 diagnostic (federally approved Emergency Use Authorized molecular assay) test.

Staff who test positive for COVID-19, initially have no symptoms, but then develop symptoms during their 10-day home isolation period may return to work once the following conditions are met:

- At least 10 days have passed since symptoms first appeared; **AND**
- At least 3 days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications; **AND**
- Improvement in respiratory symptoms¹ (e.g., cough and shortness of breath)

¹ It is possible that individuals may still have residual respiratory symptoms despite meeting the criteria to discontinue isolation. These individuals should continue to wear a facemask/cloth face covering when within 6 feet of others until symptoms are completely resolved or at baseline.

Staff should be provided information about how to appropriately isolate within their home. This includes the following recommendations:

Setup:

- A separate bedroom. If a bedroom must be shared with someone who is sick, consider advising the following:
 - Make sure the room has good air flow by opening the window and turning on a fan to bring in and circulate fresh air if possible.
 - Maintain at least 6 feet between beds if possible.
 - Sleep head to toe.
 - Put a curtain around or place other physical divider (e.g., shower curtain, room screen divider, large cardboard poster board, quilt, or large bedspread) to separate the ill person's bed.
- A separate bathroom **or** one that can be [disinfected](#) after use.

Equipment:

- A facemask (or if unavailable, a cloth face covering) should be worn by the infected person if there are others in the household or when healthcare or home care workers enter the house.
- Gloves for any caregivers when touching or in contact with the person's infectious secretions.
- Appropriate [cleaning](#) supplies for disinfecting the household.
- A thermometer for tracking occurrence and resolution of fever.

Services:

- Clinical care and clinical advice by telephone or telehealth.
- Plan for transportation for care if needed.
- Food, medications, laundry, and garbage removal.

When and how to seek care:

- If new symptoms develop or their symptoms worsen.
- If the infected person is going to a medical office, emergency room, or urgent care center, the facility should be notified ahead of time that the person has COVID-19; the person should wear a facemask (or if unavailable, a cloth face covering) for the clinical visit.
- Any one of the following emergency warning signs signal a need to call 911 and get medical attention immediately:
 - Trouble breathing
 - Bluish lips or face

- Persistent pain or pressure in the chest
- New confusion or inability to arouse
- New numbness or tingling in the extremities

Institutions with COVID-19 Cases

As soon as possible after one (or more) COVID-19 positive individual(s) (inmate or staff) is identified in an institution, serial retesting of all staff should be performed every 14 days until no new cases are identified in two sequential rounds of testing. The institution may then resume their regular surveillance testing schedule as outlined above.

For institutions which are organized by yard, initial testing can be limited to the yard where the positive inmate is housed or staff is assigned. If there are multiple yards at an institution, and the those who have tested positive are clustered in one yard, serial testing should only occur among staff in that yard. It is not necessary to test staff across multiple yards as long as staff are not moving among buildings to provide services.

If there are positive cases across multiple yards at any given institution, all staff across all yards should be tested every 14 days until no new cases are identified in two sequential rounds of testing. The institution may then resume their regular surveillance testing schedule as outlined above.

Staff who are pending a COVID test result and are asymptomatic can continue to work while wearing face coverings and utilizing appropriate PPE. All staff should be screened for fever, respiratory symptoms, or other COVID related other symptoms each time they enter any Institution.

Staff who test negative:

Staff who test negative and are asymptomatic can continue to work while wearing face coverings and utilizing appropriate PPE. All staff should be screened for fever, respiratory symptoms, or other COVID related other symptoms each time they enter any Institution. To the extent possible, the institution should limit staff movement among multiple yards to limit exposure. Additionally, staff who are sick should stay home. Personnel who develop fever, respiratory symptoms, or other symptoms should be instructed not to report to work and notify their supervisor.

Staff who test positive:

Staff who test positive for COVID-19 and who have had NO symptoms shall follow the instructions outlined above.

Retesting of a Previously Confirmed Positive Employee

An employee who has been confirmed positive by a diagnostic COVID-19 test shall not retest through either institutional surveillance, outbreak, or specialty assignment.

Testing of New Employees and Employees Returning from a Leave of Absence

All new employees of the institution or employees returning from a leave of absence (whether industrial or non-industrial) shall be tested for COVID-19. Testing should occur 48 hours prior to the start of or return to work date, unless documentation of prior positive diagnostic COVID-19 test is provided.

General Definitions:

1. Staff- for the purpose of this policy, any individual whose work assignment is to a particular institutional facility, including but not limited to, CDCR and California Correctional Health Care Services staff, registry, contract, Division Adult Parole Operations, Prison Industry Authority and Board of Parole Staff who interact with inmates.
2. New Employee- an employee who has not previously been assigned to a particular institution/worksites.
3. Leave of Absence- for the purposes of this policy is any employee who has not worked a shift within a consecutive 14 calendar day period. Vacations apply.

The California Department of Human Resources (CalHR) administrative time off (ATO) guidelines will be evaluated and applied. In unique situations, CDCR or CCHCS Human Resources designees will consult with CalHR.

This policy is subject to change as CDC guidelines, PPE availability and testing options change.

Exhibit B

From: Cullen, Vincent@CDCR
Sent: Friday, June 5, 2020 2:03 PM
To: CDCR CCHCS CEOs <CDCRCCHCSCEOs@cdcr.ca.gov>
Cc: Tharratt, Steven@CDCR <Steven.Tharratt@cdcr.ca.gov>; 'Bick, Joseph (CMF) @CDCR (Joseph.Bick@cdcr.ca.gov)' <Joseph.Bick@cdcr.ca.gov>; Rosenberg, Morton@CDCR <Morton.Rosenberg@cdcr.ca.gov>; Barney-Knox, Barbara@CDCR <Barbara.Barney-Knox@cdcr.ca.gov>; Podratz, Christopher@CDCR <Christopher.Podratz@cdcr.ca.gov>; Herrick, Robert@CDCR <Robert.Herrick@cdcr.ca.gov>; Brockenborough, Rainbow@CDCR <Rainbow.Brockenborough@cdcr.ca.gov>; McElroy, Donald@CDCR <Donald.McElroy@cdcr.ca.gov>; Halverson, Dennis@CDCR <Dennis.Halverson@cdcr.ca.gov>; Moss, Joseph@CDCR <Joseph.Moss@cdcr.ca.gov>; Callahan, Charles@CDCR <Charles.Callahan@cdcr.ca.gov>; Seibel, Kim@CDCR; Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>
Subject: Testing and Movement Strategy

CEO's,

We need to make a slight change to our testing and transfer strategy regarding the timing of tests. In consultation with Dr. Tharratt, it has been determined that a patient should not transfer if the date of their NEGATIVE test is past 7 days on the date of transfer. This means 7 days from the date the test was administered. This will require many of the inmates scheduled to transfer next week to be retested.

CCHCS will work with CDCR to identify a process to inform CEO's the specific date a patient will transfer so the ideal test date can be determined based on the individual institution's testing response times and inmates will only need to be tested once.

If you have any questions or concerns, please let me know.

<image004.png> **vincent s. cullen**
DIRECTOR
Corrections Services
California Correctional Health Care
Services
(916) 691-2887 office
Vincent.Cullen@cdcr.ca.gov

Exhibit C



CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

MEMORANDUM

Date: June 11, 2020

To: California Department of Corrections and Rehabilitation (CDCR) - All Staff
California Correctional Health Care Services (CCHCS) - All Staff

From:

Ralph M. Diaz
Secretary
CDCR

J. Clark Kelso
Receiver
CCHCS

Subject: **UPDATE TO THE MARCH 13, 2020 MEMORANDUM MESSAGE TO EMPLOYEES REGARDING COVID-19**

We hope that you and your families are staying healthy. As COVID-19 guidance continues to evolve, we remain dedicated to the safety, health, and well-being of staff and the inmate population. While stay at home orders are beginning to lift and local businesses are reopening, please remember there are still very important safety guidelines that should be followed both at work and as individuals residing in our communities.

Reminders:

At Work

- Adhere to cleaning and disinfection protocols for example, clean your face coverings and any other equipment such as computers, phones, copiers, and state issued equipment kept on your person or assigned work vehicle.
- Physically distance at all times possible.
- Staff working or performing duties on institutional grounds shall wear cloth or other approved face barrier coverings at all times with the exception of an outdoor setting where 6 feet physical distancing can be accomplished. Please note, this is a slight modification from the April 16, 2020 CalPIA Cloth Face Mask Barrier memorandum. If alone in an office space or tower a mask is not required. If someone enters the space, masks are required. Failure to do so may result in progressive discipline.
- As a reminder, maintaining physical distancing requirements when moving about the institution for routine tasks is still recommended.
- Additionally, staff working in headquarters offices, regional offices, or institution administrative offices shall be required to wear cloth face coverings when in close proximity of others where 6 feet physical distancing cannot be achieved.
- Wear proper PPE according to guidance provided on the memorandum authored by Heidi M. Bauer, MD MS MPH and Diana O'Laughlin, FNP-BC, DNP on April 6th, 2020 [COVID-19 Personal Protective Equipment \(PPE\) Guidance and Information](#).

CDCR Employees Statewide
CCHCS Employees
Page 2

- Wash your hands frequently.
- Answer the daily screening questions with any new symptoms that you may be experiencing or if you feel sick during your work shift, or have COVID symptoms, report to your supervisor and go home.

Common occurrences that should not happen:

- Handshakes, fist bumps, and hugging.
- Potlucks.
- Gathering in a breakroom, or small space for breaks or lunches, even for small amount of time.

At Home

- Change out of your work clothes before or when you get home. Launder frequently with normal detergent. No extra laundering or special handling is needed.
- At the beginning of the day and when you get home, disinfect items that are frequently touched by yourself or others. Such items could include cellphones and cellphone cases, utility belts, door handles, and keyboards. Regular household disinfectants are effective.
- Disinfecting surfaces and items and cleaning your hands will reduce transmission.
- Cover your mouth and nose when sneezing, cough into your sleeve, and wash your hands if you accidentally soiled them with respiratory secretions.

Each day, our gratitude goes out to each of you during this challenging time and encourage staff and their families to continue their efforts at work and home to control the spread of COVID-19. Working together, we will get through this.